IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 8 of 2007

Sealandair Freight(I) Pvt.Ltd. . .. Petitioner

versus

Tonga Distribution Ltd. .. Respondent

...

Mr.J.P. Sen with Mr. Vishal Sheth i/b Ruben A. Fernandes for the petitioner.

Mr.Rahul Narichania with Mr.Gautam i/b Mulla & Mulla for the respondent.

CORAM : D.G. KARNIK,J.

DATED : 21st February 2007

P.C.:

1. Heard counsel for the parties. By consent, heard finally.

2. By this petition under section 9 of the Arbitration & Conciliation Act 1996 (for short "the

Arbitration Act") the petitioner seeks interim relief for the purpose of securing the amount awarded by an award.

3. An Arbitral Tribunal of three learned arbitrators was appointed to adjudicate upon the disputes between the petitioner and respondent. By an award dated 19th April 2006, the Arbitral Tribunal unanimously held that the respondent was liable to pay to the petitioner sums of Rs.43,45,424.82 and Rs. 48,67,500.52 together with interest on each of the sums at the rate of 9% p.a. from the date of the award till realisation. Accordingly, an award has been passed unanimously by the Arbitral Tribunal.

4. The respondent has filed a petition under section 34 of the Arbitration Act challenging the award. Considering the present pendency of the matters in this court, it may take several months for the decision of the said petition. The petitioner apprehends that in the mean while the respondent may dispose of his assets leaving the petitioner with no remedy to enforce the award. The petitioner has therefore sought an interim relief for securing the amounts awarded under the award.

5. By an ad-interim order dated 31st January 2007 this court has granted ad-interim relief in terms of prayer clause (c) restraining the respondent from alienating, encumbering or parting with the possession or otherwise creating third party rights in respect of its assets.

6. I have perused the affidavit in reply filed by the respondent. It has denied that the respondent was incorporated in a foreign country with a view to place itself beyond the reach of the creditors in India and/or to avoid income tax in India. Except for this denial the respondent has not stated that they are not trying to dispose of their assets. The respondent does not appear to own any assets in India. In any event it has not disclosed any assets in India from which the petitioner would be in a position to recover the amount under the award. In the circumstances, it would be appropriate to direct the respondents not to transfer its assets unless it secures the payment of the amounts due under the award. Hence, I pass the following order:

O R D E R

7. The respondent is restrained by an order of injunction from disposing of, alienating, encumbering, parting with the possession and/or otherwise creating third party interest in any of its assets, movable as well as immovable, wheresoever situate or located in the world. This, injunction shall cease to operate if the respondent furnishes a security to the satisfaction of the Prothonotary & Sr. Master in the sum of Rs.96,27,500/- together with interest thereon at 9% p.a. from the date of the award.

8. Learned counsel for the respondent prays for stay of the operation of this order. Ad-interim relief in the aforesaid terms was already granted and is in force till today. Granting of any stay would amount to vacating of that ad-interim relief. In the circumstances, request for stay of the order is rejected.

D.G. KARNIK, J